

No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**

EUGENE SONNIER, II,  
*Petitioner,*  
v.

CATHOLIC FOUNDATION OF THE DIOCESE OF  
LAYFETTE, ET AL.,  
*Respondents.*

On Petition for Writ of Certiorari  
To The Court of Appeal Third Circuit for the State of  
Louisiana, Writ Denied Supreme Court of Louisiana

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

Whether Louisiana's dis-internment statute, La. R.S. 8:659, is preempted by Title 10 U.S.C. § 1482, and whether the state statute is in direct conflict with congressional intent regarding the rights of members of the United States Armed Forces to designate an individual authorized to the direct disposition of their remains if they die in service of their country, and whether Louisiana's statute constitutes an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in providing military benefits to service members.

## **PARTIES TO THE PROCEEDING**

Petitioner, who was the plaintiff/appellant below, is Eugene Sonnier, II.

Respondents, who were the defendants/appellees below, are The Catholic Foundation of The Diocese of Lafayette, Society of The Roman Catholic Church of The Diocese of Lafayette, The Congregation of Saint Genevieve Roman Catholic Church, Norlet Pierre, and The Louisiana Cemetery Board.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner respectfully petitions the Court to issue a writ of certiorari to review the decision of the Supreme Court of Louisiana denying discretionary review of the final Judgment of the Court of Appeal for the Third Circuit of the State of Louisiana. This case affords the Court the opportunity to correct the state court's misinterpretation and misapplication of Title 10 U.S.C. § 1482 in suits involving dis-interment of deceased members of the United States Armed Forces and, in so doing, re-affirm the sanctity and supremacy of federal law over conflicting state law.

## **OPINION AND JUDGMENT BELOW**

The Supreme Court of Louisiana's denial of discretionary review is reproduced at App. 2A.<sup>1</sup> The opinion of the Louisiana Court of Appeal is reproduced at App. 10A.<sup>2</sup>

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<sup>1</sup> *Sonnier v. Catholic Found. of Diocese of Lafayette*, No. 2019-C-0128, *writ denied*, (La. 2019) Not Designated for Publication.

<sup>2</sup> *Sonnier v. Catholic Found. of Diocese of Lafayette*, 18-C-289 (La. App. 3 Cir. 12/27/18) Not Designated for Publication.

## **STATEMENT OF JURISDICTION**

On April 8, 2019, the Supreme Court of Louisiana entered an order denying discretionary review of the erroneous Judgment entered by the Third Circuit Court of Appeal on December 19, 2018. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a), as the subject matter of this dispute is the exercise of a title, right, or privilege under a statute of the United States. Specifically, this dispute addresses the right and privilege of a designee to exercise the authority granted him under 10 U.S.C. §1482 to direct disposition of his son's remains. Petitioner timely filed this petition for a writ of certiorari within ninety days of the Supreme Court of Louisiana's Judgment.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE**

Article I, Section 8 of the United States Constitution grants Congress the power to raise and strengthen armies, to provide and maintain a navy, and to make rules for the government and regulation of land and naval forces. State laws are preempted by federal, congressional authority when regulations concerning military

service members implicitly conflict. The basis for implied conflict preemption, which is at issue here, is the Supremacy Clause of the United States Constitution, which provides, in pertinent part, "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. Const. art. VI, cl.2.

Title 10 U.S.C. § 1482 provides service members the right and privilege to appoint a beneficiary to direct the disposition of their remains. Specifically, Title 10 U.S.C § 1482 provides in pertinent part:

- (c) The following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:
  - (1) The person identified by the decedent on the record of emergency data maintained by the Secretary concerned (DD Form 93 or any successor to that form), as the Person Authorized to Direct Disposition (PADD), regardless of the relationship of the designee to the decedent. 10 U.S.C. § 1482

Concomitantly, Louisiana Revised Statute 8:655, "Right of disposing of remains; military personnel; limitation of liability," fully recognizes the rights of a deceased service member's designee to direct the disposition of the decedent's remains. It provides, in pertinent part:

B.(1) Notwithstanding the provisions of Subsection A of this Section, if the decedent died in a manner described by 10 U.S.C. (a)(1) through (8) while serving in any branch of the United States Armed Forces, the United States Reserve Forces, or National Guard, and the decedent executed a United States Department of Defense Record of Emergency Data, known as DD Form 93, or its successor form, the right to control interment for the decedent shall devolve upon the Person Authorized to Direct Disposition, also referred to as the PADD, as indicated on the DD Form 93 or its successor form. La. R.S. 8:665(B)

However, in contravention of 10 U.S.C. § 1482, Louisiana Revised Statute 8:659, "Permission to move remains," sets forth

Louisiana law regarding when and with whose consent a body may be exhumed and relocated, stating as follows:

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other specific directions, in the form of a notarial testament or a written and notarized declaration, have been given by the decedent:

(1) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.

(2) A majority of the surviving adult children of the decedent.

(3) A majority of the surviving adult grandchildren of the decedent.

(4) The surviving parents of the decedent.

(5) A majority of the surviving adult siblings of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required. La. R.S.8:659

Other pertinent provisions of 10 U.S.C. § 1482, *et seq.* at App. 55A, and Louisiana's Interment Laws, La. R.S. 8:655, *et seq.* are lengthy and reprinted at App. 64A.

## INTRODUCTION

This case concerns the United State's commitment to honoring the final wishes of military service members regarding the disposition of their bodies upon their death: whether state legislatures may circumvent or ignore congressional authority and undermine the right of a service member's designated Person Authorized to Direct Disposition regarding both interment and dis-interment of the deceased service member's remains.

As demonstrated herein, congressional authority indeed supersedes state legislative provisions where there is a conflict between the two, and such a conflict currently exists between 10 U.S.C. § 1482 and Louisiana state law governing exhumations, La. R.S. 8:659.

Federal law provides a means for fallen service members to determine who shall be responsible for the disposition of their remains. As a matter of public policy, the final requests of

deceased service members should be honored regardless of the state in which his or her remains are laid to rest. When young men and women enlist in the military, they routinely execute forms expressing preferences that guarantee benefits for themselves and their families. At issue here is Department of Defense Form 93 ("DD Form 93"), which allows a serviceman to designate a Person Authorized to Direct Disposition ("PADD"), the individual who the service member empowers and entrusts with making decisions regarding the handling and burial of the soldier's remains should he or she die in service of this country.

Louisiana R.S. 8:655 addresses the rights of PADDs to dispose of the remains of a member of the Armed Services. However, this state statute does not specify whether the PADD has the authority to dis-inter the decedent. Louisiana Courts have held that La. R.S. 8:659 is the authority regarding dis-internment because 10 U.S.C. §1482 does not specifically address dis-internment within its text, just "internment." As interpreted by the Louisiana courts, La. R.S. 8:659 only permits a person authorized in decedent's will or a notarized written declaration the power to exhume a buried body if, and only if, the authorized

person obtains consent from the Louisiana Cemetery Board and other family members. This case presents a unique question of whether the designated PADD is given the exclusive authority to control both internment and dis-internment pursuant to Title 10 U.S.C. § 1482, and whether Louisiana law on dis-internment is pre-empted by federal law pursuant to the Supremacy Clause of the United States Constitution.

Since 1845, this Court has employed the Supremacy Clause doctrine. Since then, the Supremacy Clause has been used to declare and enforce federal congressional authority when a conflict exists between federal and state law.<sup>3</sup> Alexander Hamilton wrote that the Supremacy Clause, "only declares a truth, which flows immediately and necessarily from the institution of a Federal Government."<sup>4</sup> Giving effect to Hamilton's interpretation of top-down authority is the fundamental function of the Supremacy Clause. This guiding concept remains true and is reflected in this Court's more recent analyses of the doctrine. As the late Justice Scalia wrote, "And, as we have long recognized, if an individual claims federal law

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<sup>3</sup> *Carroll v. Safford*, 441 U.S. 671 (1845).

<sup>4</sup> The Federalist No. 33, p. 207 (J. Cooke ed.1961).

immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted.<sup>5</sup> In that regard, The Supremacy Clause provides protection against state laws and regulations that challenge or undermine federally created rights and privileges, as in the present matter.

To determine if a state statute is preempted by federal law under the Supremacy Clause, congressional intent must be ascertained. This Court has consistently held that if Congress expressly intended to act in an area of law, the federal law will preempt the state law.<sup>6</sup> "In the absence of an express statement by Congress that state law is pre-empted, there are two other bases for finding pre-emption. First, when Congress intends that federal law occupy a given field, state law in that field is pre-empted. Second, even if Congress has not occupied the field, state law is nevertheless pre-empted to the extent it actually conflicts with federal law, that is, when compliance with both state and federal law is impossible or when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives

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<sup>5</sup> *Armstrong v. Exceptional Child Ctr., Inc.*, 135 U.S. 1378 (2015).

<sup>6</sup> *California v. ARC America Corp.*, 490 U.S. 93 (1989).

of Congress'."<sup>7</sup> Further, this Court has held that even when a state law is not in direct conflict with a federal law, the state law could still be unconstitutional if the state law is an obstacle to the accomplishment and execution of Congress' full purposes and objectives."<sup>8</sup>

Similar to the issue here, regarding the disposition of a fallen soldiers' remains under 10 U.S.C. §1481, this Court has found that military retirement funds and the beneficiaries named pursuant to 10 U.S.C. 3911 and 3929 preempt state laws that frustrate the purpose of such provisions. As this Court held in 2000, application of California's "community property principles to military retired pay threatens grave harm to 'clear and substantial' federal interests."<sup>9</sup> As this Court reasoned in the opinion in *McCarty v. McCarty*, 453 U.S. 210 (1981), California's prescribed community property division of retired pay, by reducing the amounts that Congress has determined are necessary for retired service members, has the potential to frustrate the congressional objective

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<sup>7</sup> *Id.* at 100-101; quoting *Hines v. Davidowitz*, 312 U. S. 52, 67 (1941).

<sup>8</sup> *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

<sup>9</sup> *McCarty v. McCarty*, 453 U.S. 210, 212 (1981).

of providing for the retired service member.<sup>10</sup> In addition, such a division has the potential to interfere with the congressional goals of having the military retirement system serve as an inducement for enlistment and re-enlistment and as an encouragement to orderly promotion and a youthful military.<sup>11</sup> This decision was based on a previous ruling where the Court held, "[s]tate family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden."<sup>12</sup> "The 'critical terms' of the federal statute relied upon in reaching that conclusion included provisions establishing 'a specified beneficiary'."<sup>13</sup>

Analogous to the appointment of a military retirement beneficiary, DD Form 93 allows members of the military to designate a PADD, who is thereby entitled not only to direct the disposition of the service member's remains, but receives reimbursement for certain expenses

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979). (In this case, the Court decided the federal Railroad Retirement Act of 1974 could not be divided under state community property laws.)

<sup>13</sup> *McCarty v. McCarty*, 453 U.S. 210, 220 (1981).

associated with burial and other valuable benefits as well, such as receipt of a formally presented U.S. flag. DD Form 93 states its purpose as follows: "For military personnel, [this form] is used to designate beneficiaries for certain benefits in the event of the Service member's death."<sup>14</sup> Item 13(a) of DD Form 93 instructs the service member to, "Enter the name and relationship of the Person Authorized to Direct Disposition (PADD) of your remains should you become a casualty."<sup>15</sup> The form continues to advise, "Only the following persons may be named as a PADD: surviving spouse, blood relative of legal age, or adoptive relatives of the decedent. If neither of these three can be found, a person standing in loco parentis may be named."<sup>16</sup>

As this Court has held, federal law protecting military beneficiaries and the benefits and rights afforded to them shall not be weakened by state laws. "[D]enials of traditional rights to any group should not be approved without examination, especially when the group

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<sup>14</sup> Department of Defense Form 93, Reproduced at App. 67A

<sup>15</sup> Department of Defense Form 93, Reproduced at App. 67A

<sup>16</sup> Department of Defense Form 93, Reproduced at App. 67A

comprises members of the military, who are engaged in an endeavor of national service, frequently fraught with both danger and sacrifice."<sup>17</sup> "[L]egislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. . . . And no practice . . . can cut down the service adjustment benefits which Congress has secured the veteran under the Act."<sup>18</sup>

However, as interpreted by Louisiana state courts, Louisiana law threatens a service member's right to designate a PADD whose wishes should be executed without hindrance or opposition by state law. As it stands, Louisiana law only allows a testamentary designee direct control of dis-internment with the consent of the Louisiana Cemetery Board. Because this law, La. R.S. 8:659, obstructs the rights of a military beneficiary under 10 U.S.C. §1482, this Court

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<sup>17</sup> *Barker v. Kansas*, 503 U.S. 594, 598 (1992)

<sup>18</sup> *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946); *Trailmobile Co. v. Whirls*, 331 U.S. 1328 (1947); *Alabama Power Company v. Davis*, 431 U.S. 581 (1977). (These cases deal with various violations of the Military Selective Service Act of 1917. The Supreme Court consistently held in these cases that military benefits should favor the service member over their employer.)

should accept this opportunity to identify and correct the state law's interference with a federally granted right and privilege.

The benefits provided by Congress pursuant to 10 U.S.C. § 1482 are frustrated and weakened by Louisiana Courts' interpretation of a PADD's rights with regard to dis-internment, as will from time to time be necessary to give full effect to the deceased service member's wishes for the repose of his body. The Supremacy Clause affords relief in this situation because La. R.S. 8:659 frustrates the rights bestowed upon PADDs by 10 U.S.C. § 1482, thus undermining Congress' clear intent, purposes and objectives in this area of law.

## **STATEMENT OF THE CASE**

### **I. Factual Background**

Eugene Sonnier, III ("Trey Sonnier"), the son of Petitioner, Eugene J. Sonnier, II ("Mr. Sonnier"), tragically died at the young age of nineteen on October of 27, 2013 while serving honorably on active duty status in the United States Air Force. Prior to his death, Trey executed Department of Defense Form 93, which allows military members to designate a

Person Authorized to Direct Disposition ("PADD") pursuant to 10 U.S.C. § 1482. Trey Sonnier chose his father, Mr. Sonnier, to be his sole PADD if he were to die while in service of the United States Air Force. Trey Sonnier trusted his father, who is a mortician by trade, to give him a burial and gravesite fitting of someone who made the ultimate sacrifice for his country. Following Trey Sonnier's death, Mr. Sonnier purchased a plot at Calvary Cemetery in Lafayette Parish, Louisiana where he and his family held Trey's Sonnier's mournful funeral. Trey Sonnier's remains were laid to rest in that burial plot on November 4, 2013.

Prior to Trey Sonnier's funeral, Mr. Sonnier advised the Calvary Cemetery manager that his plan was to construct a double tomb so he could ultimately be buried next to his son and indicated his intent to purchase the two adjacent plots as necessary for building the tomb he had envisioned. Before Mr. Sonnier returned to the cemetery to purchase the adjacent plots, his ex-wife and Trey's mother, Mrs. Norlet Pierre ("Mrs. Pierre"), purchased the adjacent plots for herself and her spouse. Thus, Mr. Sonnier lost the opportunity to purchase the plots for himself and execute his authority as Trey Sonnier's PADD--at least with regard to his son's present burial location.

Although Mr. Sonnier was the sole purchaser of Trey Sonnier's plot, the title to the plot was reissued jointly to Mrs. Pierre and Mr. Sonnier against his wishes.

## **II. Procedural History**

On December 16, 2014, Mr. Sonnier filed suit in the 15th Judicial District Court of Lafayette Parish against Mrs. Pierre, The Catholic Foundation of the Diocese of Lafayette, owner and operator of the cemetery, and other entities that may have ownership interest in the cemetery. Mr. Sonnier's Petition for Recognition of Ownership and Injunctive Relief alleged that the defendants interfered with his right to direct the disposition of his son's remains by selling the plots of land to Mrs. Pierre. Mr. Sonnier argued that his stated intention to purchase the plots adjacent to his son's was sufficient to revoke the purchase Mrs. Pierre made, and that the cemetery violated his rights as Trey Sonnier's PADD. The trial court sustained the defendants' Motion to Dismiss for no cause of action. Mr. Sonnier appealed that decision to the Louisiana Third Circuit Court of Appeal, and on April 13, 2016, the appeal court issued an opinion affirming the trial court's

ruling.<sup>19</sup> Mr. Sonnier then applied to the Supreme Court of Louisiana for issuance of a writ.

On October 28, 2016, the Louisiana Supreme Court affirmed the Third Circuit's affirmation of the lower Court's dismissal of the action for lack of a cognizable cause of action regarding the ownership of the cemetery plots.<sup>20</sup> However, the Court remanded the case to the district court to give Mr. Sonnier an opportunity to amend his petition to state a cause of action for re-interment pursuant to La. R.S. 8:659, which would provide Mr. Sonnier alternate relief by permitting him to move Trey Sonnier's remains to a different location where he could build the tomb Mr. Sonnier initially intended.

Despite the adverse ruling as to the property dispute, the majority opinion of the Supreme Court of Louisiana stated, "Trey honorably served this country as a member of the United States Air Force. Our service men and women work every day to protect and defend this

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<sup>19</sup> *Sonnier v. Catholic Found. of Diocese of Lafayette*, 215 So.3d 806 (La. App. 3rd Cir. 2016). Reproduced at App. 35A

<sup>20</sup> *Sonnier v. Catholic Found. of Diocese of Lafayette*, 202 So.3d 992 (La. 2016). Reproduced at App. 27A

nation, and put their lives at risk for the benefit of all of us. As such, these brave men and women necessarily rely on the validity of their formal designations, and should be able to trust that their wishes will be honored in the event their lives are lost in the line of duty. Here, it is undisputed that Trey specifically designated Mr. Sonnier as the **sole** PADD. Trey did not choose his mother as co-designee. Thus, Trey trusted Mr. Sonnier to independently make all decisions relative to his burial.”<sup>21</sup>

Acting in his capacity as Trey Sonnier's loving father and sole PADD, Mr. Sonnier amended his petition to reflect his desire to exhume his son's remains from the current cemetery and re-inter his casket at an appropriate alternate location of his choosing. On remand, the Louisiana Cemetery Board intervened as a third party of interest, opposing the dis-internment of Trey Sonnier's body. This intervention occurred because, pursuant to La. R.S. 8:569 and its current interpretation by Louisiana courts, the Board must authorize any dis-internment of remains already buried.

In August of 2017, Mr. Sonnier filed a Petition for Declaratory Judgment seeking authorization

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<sup>21</sup> *Id.* at 993 (La. 2016) [original emphasis].

to dis-inter his son's remains. After the hearing, the trial court denied Mr. Sonnier's request for declaratory judgment. Mr. Sonnier appealed that decision to the Louisiana Third Circuit Court of Appeals. The sole assigned error stated in his appeal brief was that the trial court erroneously interpreted La. R.S. 8:659 and failed to acknowledge his right and privilege to disinter his son's remains under his authority as PADD under federal law, 10 U.S.C. § 1482. The Third Circuit Court of Appeal upheld the trial court's decision.

Mr. Sonnier applied for review by the Supreme Court of Louisiana for the second time. Although Mr. Sonnier's writ application was denied by a majority of the court, Chief Justice Bernette Johnson of the Louisiana Supreme Court dissented and assigned reasons why she would grant the writ. Chief Justice Johnson stated in her reasons, "Giving Trey's PADD directive the broad deference it deserves, I would find Mr. Sonnier is legally entitled to move his son's remains to a burial location of his choice. I find it outrageous to suggest that La. R.S. 8:659 supersedes 10 U.S.C. § 1482."<sup>22</sup>

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<sup>22</sup> *Sonnier v. Catholic Found. of Diocese of Lafayette*, No. 2019-C-0128, *writ denied*, (La. 2019) Not Designated for Publication

Chief Justice Johnson's poignant dissent reflects the outcome best supported by federal jurisprudence in similar situations of conflict between state and federal law.

## **REASONS FOR GRANTING THE WRIT**

### **This Case Presents a Unique and Vital Question of National Importance Regarding Military Internment Rights.**

Our nation takes great pride in respecting and honoring the sacrifices of the men and women who serve in the U.S. Armed Forces. Soldiers, airmen, and seamen willing to lay down their lives in service of our country are heralded as heroes to all Americans. Laws enacted to benefit military members serve an important function by recognizing and expressing gratitude for acts of heroism and sacrifice in military service and foster morale among service members who carry out their duties with the knowledge that their final wishes will be carried out if tragedy were to strike. However, Congress' purposes and objectives related to incentivizing participation in a young and vibrant military--a military that reliably honors its fallen and their families--cannot be achieved if state laws are permitted to undermine any aspect of the benefits

bestowed upon the fallen. As G.K. Chesterton wrote, “The true soldier fights not because he hates what is in front of him, but because he loves what is behind him.”<sup>23</sup> Rewarding such true soldiers’ wishes certainly requires respecting their wishes in handling their remains.

As this case demonstrates, current Louisiana law and its interpretation by the Louisiana courts usurps the final wishes of fallen servicemen and their families because it imposes additional burdens and requirements on PADDs that are not present in 10 U.S.C. § 1482. The additional state law burdens and unlawfully limits or, as here, completely undermine a PADD’s authority to direct the ultimate disposition of the decedent’s remains--not just the initial disposition of such precious remains. To hold otherwise would allow the dictates of a state administrative body of unelected officials, the cemetery board, to determine when and how federal law grants service members the right to designate an individual to direct the handling of their remains. This certainly offends and frustrates

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<sup>23</sup> Chesterton, G. K. (1975). *The Innocence of Father Brown*. New York: Penguin.

Congress' intent in passing Title 10 U.S.C. § 1482 *et seq.*

As currently interpreted, La. R.S. 8:659 only allows a PADD the right to dis-intern the decedent's remains if the PADD is the testamentary designee and if the Louisiana Cemetery Board consents. This should not be. La. R.S. 8:659 should not undermine the authority of Trey Sonnier's rights under 10 U.S.C. § 1481. That authority was bestowed and belongs exclusively to his father. Congressional intent to provide benefits to military members supersedes state law, just as Mr. Sonnier's authority to honor his son in the manner he chooses should supersede the authority of a testamentary designee and the Louisiana Cemetery Board. Eugene "Trey" Sonnier, III, honorably served his country and the benefits Congress intended to provide his grieving father should be affirmed and upheld by this Honorable Court.

## **CONCLUSION**

Therefore, Petitioner respectfully maintains that this Honorable Court should review this dispute to affirm the supremacy of federal law

in this area, and ultimately respect and honor  
the final request of the fallen.

Respectfully Submitted,

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**EUGENE J. SONNIER, II  
v.  
THE CATHOLIC FOUNDATION OF THE  
DIOCESE OF LAFAYETTE, ET AL.**

**NO. 2019-C-0128**

**SUPREME COURT OF LOUISIANA**

**April 8, 2019**

**ON WRIT OF CERTIORARI TO THE  
COURT OF APPEAL, THIRD CIRCUIT,  
PARISH OF LAFAYETTE**

**JOHNSON, C.J. would grant the writ  
application and assigns reasons.**

Eugene Sonnier, III ("Trey"), the son of applicant, Eugene J. Sonnier, II ("Mr. Sonnier"), and his ex-wife, Norlet Pierre ("Mrs. Pierre"), died in October 2013 while serving in the United States Air Force. Prior to his death, Trey executed Department of Defense Form 93 which, among other things, allows military members to designate the "person authorized to direct disposition" ("PADD"). Mr. Sonnier was listed as the PADD on Form 93, and thus was the person authorized to make funeral and burial arrangements for Trey. If our goal is to respect

the wishes of military personnel who sacrifice their lives for our country, the results of this case directly disrespect the dictates and wishes of the deceased, and purposefully thwart Mr. Sonnier's plans for his son's burial.

Following Trey's death, Mr. Sonnier met with the cemetery manager and purchased a plot as Trey's burial place. Mr. Sonnier further advised the manager that his plan was to construct a double tomb so he could be buried next to his son, and indicated his intent to purchase the two adjacent plots that were necessary to construct the double tomb. Before Mr. Sonnier could return to purchase the plots, Mrs. Pierre purchased the adjacent plots for herself and her spouse. In addition, although Mr. Sonnier was the sole purchaser of Trey's plot, the title to the plot was re-issued jointly to Mr. Sonnier and Mrs. Pierre.

Mr. Sonnier initially filed suit against several parties essentially asserting sole ownership of the plots or, alternatively, seeking permission to move Trey's remains since he had the exclusive right to control his son's interment by virtue of his authority under Form 93. When he was not able to obtain the desired relief in that action, Mr. Sonnier filed a Petition for Declaratory Judgment asserting that Trey's PADD

authorized him to disinter Trey and re-inter him in a location of his choice. In my view, Mr. Sonnier is entitled to this relief.

There is no question Mrs. Pierre's actions have prevented Mr. Sonnier from being buried next to Trey in a double tomb, and thus Trey's PADD designation empowering Mr. Sonnier to control Trey's interment has been violated. 10 U.S.C. § 1482, which governs the PADD, provides in pertinent part:

(c) The following persons may be designated **to direct disposition of the remains of a decedent** covered by this chapter:

(1) The person identified by the decedent on the record of emergency data maintained by the Secretary concerned (DD Form 93 or any successor to that form), as the Person Authorized to Direct Disposition (PADD), regardless of the relationship to the decedent. [Emphasis added].

Comparable Louisiana law provides that the PADD has the right to *control* interment. At the time of Trey's death, La. R.S. 8:655 provided, in pertinent part:

A. The right to control interment, as defined in R.S. 8:1(26), of the remains of a deceased person,

unless other specific directions have been given or the designation of a specific person to control disposition has been made by the decedent in the form of a written and notarized declaration, vests in and devolves upon the following in the order named:

\*\*\*

B. (1) If the decedent died in a manner described by 10 U.S.C. § 1481(a)(1) through (8) while serving in any branch of the United States Armed Forces, the United States Reserve Forces, or National Guard, and the decedent executed a United States Department of Defense Record of Emergency Data, known as DD Form 93, or its successor form, **the right to control interment for the decedent shall devolve upon the Person Authorized to Direct Disposition, also referred to as the PADD, as indicated on the DD Form 93 or its successor form.** [Emphasis added].

La. R.S. 8:1 (26) defines "interment" as "the disposition of human remains by inurnment, scattering, entombment, or burial in a place used or intended to be used, and dedicated, for cemetery purposes." In my view, there is nothing in La. R.S. 8:655 or in the statutory definition of

"interment" which limits the PADD's authority to the choice of initial disposition of the remains.

In denying relief to Mr. Sonnier, the court of appeal found disinterment was controlled by La. R.S. 8:659, which provides, in pertinent part:

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other specific directions, in the form of a notarial testament or a written and notarized declaration, have been given by the decedent:

- (1) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.
- (2) A majority of the surviving adult children of the decedent.
- (3) A majority of the surviving adult grandchildren of the decedent.
- (4) The surviving parents of the decedent.
- (5) A majority of the surviving adult siblings of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

The court of appeal concluded Mr. Sonnier did not meet the requirements of the statute. *Sonnier v. Catholic Found. of Diocese of Lafayette*, 18-289 (La. App. 3 Cir. 12/27/18), 261 So. 3d 965, 968. Relying on its earlier opinion in Mr. Sonnier's initial case, the court explained that because this statute does not reference Form 93, Mr. Sonnier was not authorized by the PADD to disinter his son's remains. Thus, based on La. R.S. 8:659, after Trey's initial burial, the court determined the voluntary consent of the cemetery authority was statutorily required before Trey's remains could be disinterred and transferred. *Id.*

I strongly disagree that Mr. Sonnier is required to obtain consent from the cemetery, or Mrs. Pierre, in order to move Trey's remains. As I wrote in my concurrence in this court's action on Mr. Sonnier's original writ application:

In my view, requiring the consent of the cemetery pursuant to La. R.S. 8:659 violates Mr. Sonnier's PADD rights. 10 U.S.C. § 1482, which governs the PADD, provides the PADD is designated "to direct disposition of the remains

of a decedent." Comparable Louisiana law provides that the PADD has the right to control interment. Mr. Sonnier's decision pursuant to his PADD power to control Trey's interment included the plan that they be buried next to each other in a double tomb. Thus, based on the specific facts of this case, Mr. Sonnier's PADD's authority in this case cannot be limited to the choice of initial disposition of the remains. Thus, any refusal to allow re-interment would impede Mr. Sonnier's PADD authority.

*Sonnier v. Catholic Found. of the Diocese of Lafayette*, 16-0839 (La. 10/28/16), 202 So. 3d 992, 994 (J, additionally concurring). I am of the same opinion today. Mr. Sonnier's "right to control" Trey's interment was directly undermined by Mrs. Pierre's purchase of the two adjacent plots. Thus, unless Mr. Sonnier is allowed to disinter and re-inter Trey's remains, his authority to control the disposition of Trey's remains granted to him by Form 93 will be usurped.

Trey honorably served this country as a member of the United States Air Force. Our service men and women work every day to protect and defend this nation, and put their lives at risk for the benefit of all Americans. These brave men and women necessarily rely on the validity of their formal designations, and should be able to trust

that their wishes will be honored in the event their lives are lost in the line of duty. Here, it is undisputed that Trey specifically designated Mr. Sonnier as the *sole* PADD. Trey could have chosen his mother, but did not do so. Thus, Trey trusted Mr. Sonnier to make all decisions relative to his burial. Mr. Sonnier chose and purchased a burial plot for Trey and planned to be buried next to his son in a double tomb. However, Mrs. Pierre's actions have impeded Mr. Sonnier's authority and undermined his decision. Giving Trey's PADD directive the broad deference it deserves, I would find Mr. Sonnier is legally entitled to move his son's remains to a burial location of his choice. I find it outrageous to suggest that La. R.S. 8:659 supercedes 10 U.S.C. § 1482. If Mrs. Pierre could not control her son's burial, she likewise should not be allowed to have any vote on her son's disinterment and reburial.

**EUGENE J. SONNIER, II  
v.  
THE CATHOLIC FOUNDATION OF THE  
DIOCESE OF LAFAYETTE, ET AL.**

**18-289  
STATE OF LOUISIANA COURT OF  
APPEAL, THIRD CIRCUIT**

**December 19, 2018**

**NOT DESIGNATED FOR PUBLICATION**

APPEAL FROM THE FIFTEENTH JUDICIAL  
DISTRICT COURT PARISH OF LAFAYETTE,  
NO. 20146291 HONORABLE MICHELLE M.  
BREAUX, DISTRICT JUDGE

**JOHN D. SAUNDERS JUDGE**

Court composed of John D. Saunders, Marc T.  
Amy, and Elizabeth A. Pickett, Judges.

**AFFIRMED.  
Amy, J., concurs and assigns**

**Pickett, J., dissents and assigns reasons.**

The plaintiff appeals the trial court's denial of  
his request for a declaratory judgment ordering

the defendants to allow him to move the remains of his son from where he is currently interred to another location.

## **FACTS & PROCEDURAL BACKGROUND**

Following the remand of this matter to the trial court by the supreme court, it is before this court for the second time. *See Sonnier v. Catholic Found. of the Diocese of Lafayette*, 15-1051 (La.App. 3 Cir. 3/2/16), 215 So.3d 804, *writ denied in part; writ granted in part*, 16-839 (La. 10/28/16), 202 So.3d 992. Eugene Sonnier, III (Trey), died in October 2013 while serving in the United States Air Force. Prior to his death, Trey executed a United States Department of Defense Record of Emergency Data Form 93 that designated his father Eugene Sonnier, II, as the Person Authorized to Direct the Disposition (PADD) of his body upon his death

Sonnier originally filed suit to move Trey's remains from Calvary Cemetery in Lafayette after the alleged actions of others prevented him from completing his plan for Trey's interment. He alleged in that petition that he planned for he and Trey to be interred side by side in Calvary Cemetery with a double tomb constructed over their graves. According to his pleadings, his plan required that he purchase three cemetery plots

to accommodate the tomb. Sonnier contends that his plan was thwarted when Norlet Pierre, Trey's mother and his ex-wife, and her husband purchased the three cemetery plots before he returned to the cemetery to pay for them. The record indicates that because of the conflict between he and the Pierres regarding the ownership of the three plots, Sonnier asked Saint Genevieve Catholic Church, the cemetery's owner, to retitle the plots purchased by the Pierres in his name. The Church's representative refused, and Sonnier filed suit.

In his initial suit, Sonnier sought to have the plots retitled in his name, or alternatively, to relocate Trey's remains because he was unable to obtain the consent of the church, as required by the cemetery's rules and La.R.S. 8:659, which governs the relocation of the remains of a deceased person. The defendants filed exceptions of no cause of action, asserting that Trey's PADD authorized Sonnier to direct the disposition of Trey's remains but did not dictate the ownership of the burial plot in which he was buried. The exceptions were granted by the trial court, and this court affirmed that judgment. *Sonnier*, 215 So.3d 804.

Sonnier filed an application for writ of certiorari with our supreme court. On review, the supreme

court affirmed the grant of the defendants' exceptions of no right of action for recognition of ownership, injunctive relief, or damages. *Sonnier*, 202 So.3d 992. The supreme court concluded, however, that the trial court's ruling was unclear as to whether it made a determination as to Sonnier's alternative claim for re-interring Trey as provided in La.R.S. 8:659. *Id.* at 993-94. The supreme court found that "Sonnier failed to allege he requested consent from the cemetery authority for the re-interment or that such consent was requested but wrongfully withheld by defendants, pursuant to La. R.S. 8:659." *Id.* at 993. To allow Sonnier to correct this defect, the court remanded the matter to the trial court to give him "an opportunity to amend his petition to state a cause of action for re-interment pursuant to La.R.S. 8:659." *Id.* at 993-94.

After the matter was remanded, the Louisiana Cemetery Board intervened as a third party of interest, alleging that it has standing in this matter because it is charged with enforcing and administering the provisions of Title 8. La.R.S. 8:66. Shortly thereafter, Sonnier voluntarily dismissed his claims against Ms. Pierre and the cemetery. Subsequently, in August 2017, Sonnier filed a Petition for Declaratory Judgment in

which he named Saint Genevieve Roman Catholic Church, Ms. Pierre, and the Louisiana Cemetery Board as defendants. According to Sonnier's petition, Saint Genevieve initially consented to allow him to disinter Trey's remains, but then withdrew its consent to the agreement. Sonnier further alleged that pursuant to state and federal law, Trey's PADD authorized him to disinter Trey and re-inter him in a location of his choice.

After a hearing, the trial court denied Sonnier's request for declaratory judgment ordering defendants to allow him to move the remains of his son from where he is currently interred to another location. Sonnier now appeals the trial court's judgment.

#### **DISCUSSION OF THE MERITS:**

In his sole assignment of error, Sonnier argues that the trial court erred in denying his request for declaratory judgment. He bases his argument upon the contention that the trial court erroneously interpreted La.R.S. 8:659 - Louisiana's disinterment and reinterment statute - which he asserts authorizes him to direct the disinterment or re-interment of his remains, by virtue of his designation as his son's PADD.

In *Sonnier*, 215 So.3d at, 812-13, this court stated: *Disinterment*

[B]y the second amending petition, Mr. Sonnier alternatively sought permission to have his son's body moved to another location within Calvary Cemetery "based on all information presented herein which illustrate that Eugene Sonnier, II's rights have been vastly undermined." To the extent the trial court's ruling encompassed this alternative demand, we again leave that claim undisturbed. Instead, 10 U.S.C. § 1482 (c) permits the PADD to "direct disposition of the remains of a decedent[.]" The statute is silent on the right to later disinter those remains.

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other directions in writing have been given by the decedent:

(1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.

(2) The surviving adult children of the decedent, not including grandchildren or other more remote descendants.

(3) The surviving parents of the decedent. (4) The surviving adult brothers and sisters of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

This provision makes no reference to Form 93. Additionally, in *Spiess v. Greenwood Development Co., Inc.*, 542 So.2d 810, 813 (La. App. 3 Cir. 1989), a panel of this court made the distinction between a party having the legal authority "to control the disposition of the remains of a deceased person" pursuant to La.R.S. 8:655 and the person(s) having authority to direct the relocation of a deceased's remains per La.R.S. 8:659. Referencing those statutes the panel explained that the plaintiff in that case "clearly had the sole statutory authority to initially determine the decedent's final resting place. However, after the decedent's initial burial, the voluntary consent of the defendant cemetery authority was also statutorily required before the decedent's remains could be disinterred and transferred." *Id.* Notably, while

La.R.S. 8:655 includes a reference to the PADD on Form 93, La.R.S. 8:659 includes no such reference.

Based upon this reasoning, this court concluded that Sonnier was not authorized by the PADD to disinter his son's remains. The ruling made clear that La.R.S. 8:659 controls disinterment. We agree with this holding and reach the same conclusion, that is, that La.R.S. 8:659 controls reinterment, and based on the record before us, we conclude that Sonnier is not entitled to disinterment of his son's remains.

#### **CONCLUSION:**

Eugene Sonnier, II raised one assignment of error, asserting that the trial court erred in denying his request for a declaratory judgment ordering Defendants to allow him to move the remains of his son from where he is currently interred to another location. We hold that La.R.S. 8:659 controls the reinterment of human remains,

and the record establishes that Eugene Sonnier, II has not met the requirement of La. R.S. 8:659. Accordingly, we affirm the trial court's denial of Eugene Sonnier, II's Petition for Declaratory Judgment.

We assess all costs of this appeal to Eugene Sonnier, II.

**AFFIRMED**

This opinion is NOT DESIGNATED FOR PUBLICATION. Uniform Rules- Courts of Appeal, Rule 2-16.3.

**AMY, Judge, concurring.**

Although I join the lead opinion in this case, I write separately in order to further address Mr. Sonnier's assertion that the "[d]ecision from the Louisiana Supreme Court unequivocally stated that Eugene Sonnier, II had the sole and exclusive authority to re-inter Eugene Sonnier, III[.]" (Emphasis removed.)

Reference to the supreme court's ruling confirms that it did, in fact, provide Mr. Sonnier with an opportunity to state a cause of action for re-interment pursuant to La.R.S. 8:659. *Sonnier v. Catholic Found. of the Diocese of Lafayette*, 16-0839 (La. 10/28/16), 202 So.3d 992. However, I do not read that opinion to determine that, given further amendment to the pleading, Mr. Sonnier would have a cause of action given his status as the PADD sole designee and absent the remaining considerations of La.R.S. 8:659.

Instead, by its precise wording, the supreme court recognized that the trial court had not made a determination in that regard and further explained that providing Mr. Sonnier "an opportunity to proceed with his action for reinterment" would provide broad deference to the PADD designation. *Sonnier*, 712 So.2d at 993.

As Mr. Sonnier has now filed a Petition for Declaratory Judgment in that regard, on the merits of that claim I find that the trial court correctly denied that plea. As recognized by the lead opinion, the record before the court indicates that Mr. Sonnier has not demonstrated entitlement to relief under La.R.S. 8:659.

**Pickett, J., dissenting.**

Subsection B of La.R.S. 8:655 provides that when, pursuant to 10 U.S.C.A. § 1482, a decedent who served in the military had completed a United States Department of Defense Record of Emergency Data Form 93 that designated a Person Authorized to Direct the Disposition (PADD), "the right to control interment for the decedent shall devolve upon . . . the PADD." The majority concludes that because 10 U.S.C.A. § 1482 does not reference disinterment and reinterment and La.R.S. 8:659

makes no reference "to the PADD on Form 93," Trey's PADD did not authorize Mr. Sonnier to move Trey's remains. In my view, neither of these facts affect Mr. Sonnier's claim.

Subsections A and B of Section 655 grant specified persons "the right to control interment." Section 659 specifies whose consent must be obtained to move buried remains. The majority concludes that because a PADD's consent is not required by Section 659, a PADD has no authority to move buried remains. In my view, Trey's PADD gave Mr. Sonnier the sole right to seek a judgment authorizing the removal and relocation of Trey's remains.

This issue is *de novo*. Two cases, however, have addressed the "other directions" provision of Section 659. In *Byrd v. Byrd*, 488 So.2d 1134 (La.App. 2d Cir.), *writ denied*, 491 So.2d 23 (La.1986), the court determined that the decedent's repeated statements to his family members that he wanted to be buried next to his grandfather satisfied the "other directions" requirement of Section 659. When *Byrd* was decided, Section 659 did not require that the "other directions" be in writing.

In *Pittman v. Magic City Memorial Co.*, 07-1567 (La.App. 1 Cir. 3/26/08), 985 So.2d 156, the

decedent's girlfriend filed suit to have the decedent's remains moved to another cemetery. The decedent had been buried over the girlfriend's objections under the direction of his ex-wife and children. The girlfriend sued the cemetery, and the decedent's ex-wife and children attempted to block the move. In his will, the decedent directed that the plaintiff "take charge of and make all of my funeral and burial arrangements which are to be carried out under her sole direction and in her sole discretion." The decedent also granted her "the sole discretion as to the place of my burial which I intend to be Ponemah Cemetery in Bogalusa, Louisiana." The trial court granted judgment in favor of the plaintiff, and the first circuit affirmed the judgment, explaining:

The trial court determined that *[the decedent] gave sole authority and discretion to plaintiff to direct the place of his burial when he wrote his last will and testament.* We find no manifest error in this determination. Likewise, we find no error in the trial court's application of LSA-R.S. 8:659, because *that statute clearly exempts the family's consent requirements when the decedent has made other written directions.* *Id.* at 159 (emphasis added).

Trey did not indicate in his PADD where he wanted to be buried. However, as the supreme court noted, "it is undisputed that Trey specifically designated Mr. Sonnier as the *sole* PADD. Trey did not choose his mother as co-designee. Thus, Trey trusted Mr. Sonnier to independently make all decisions relative to his burial." *Sonnier*, 202 So.3d at 993. For this reason, I believe Trey's Form 93 relieved Mr. Sonnier from having to obtain Ms. Pierre's consent. *Pittman*, 985 So.2d 156. Furthermore, even if it is determined that Section 659 requires Ms. Pierre's consent, for the reasons discussed below, I find that her and her husband's actions relieved Mr. Sonnier of fulfilling that requirement.

This case differs from *Byrd* and *Pittman* in that Mr. Sonnier initially consented to Trey's burial in Calvary Cemetery. Section 659 provides that "a deceased person may be moved." For purposes of statutory construction, "the word 'may' is permissive. La.R.S. 1:3. Historically, "[t]he disturbance of the remains of the dead, except for lawful necessary purposes" has been discouraged. *Choppin v. Dauphin*, 48 La. Ann 1217, 1220, 20 So 681, 682 (1896). See also, *Bunol v. Bunol*, 12 La.App. 675, 127 So. 70 (La.App.Orl.Cir.1930); *Bradley v. Burgis*, 25

So.2d 753 (La.App.Orl.Cir.1946); *Matter of Dufour*, 622 So.2d 1181, 1185 (La. Ct. App. 1993). Consequently, requests for moving a decedent's remains have been generally been denied.

In *Spiess v. Greenwood Development Co., Inc.*, 542 So.2d 810, p. 813 (La.App. 3 Cir. 1989) (emphasis added), this court identified two factors that must be considered when determining whether a trial court abused its discretion in denying a request to move a decedent's remains: (1) "exhumation of a body is not favored in the law and is against public policy, except in cases of necessity or for laudable purposes[.]" and (2) whether "the party asserting the right to disinterment *freely consented to the initial interment and with the understanding that the interment place selected was to be permanent.*"

In *Nolan v. Nolan*, 125 So.2d 792 (La.App. 4 Cir. 1961), the court had to determine whether a plaintiff with statutory authority under La.R.S. 8:655 and La.R.S. 8:659 should be allowed to move her husband to another cemetery. In making its decision, the court considered the following factors:

(1) Whether the initial selection of the resting place was made with deliberation and without mental reservation that at some future time removal might be desired; (2) whether there are evidences of such antagonism and hostility between the surviving spouse and the owners of the tomb or burial plot as would prevent the surviving spouse from visiting the grave freely and without embarrassment or humiliation; and (3) whether the [decedent] had evidenced a preference for one location as opposed to the other. *Id.* at 795.

The only evidence Mr. Sonnier introduced at the hearing is Trey's PADD. His pleadings and argument of counsel are not evidence. *In re Melancon*, 05-1702, p. 7 (La. 7/10/06), 935 So.2d 661. Ms. Pierre attended the hearing on her own behalf without representation and made a statement on the record explaining her position on Mr. Sonnier's request. Her statement established that a conflict arose between her, her current husband, and Mr. Sonnier regarding Trey's burial and Mr. Sonnier's plans for Trey's burial. Ms. Pierre's statement substantiates Mr. Sonnier's allegations that his plans for Trey's burial have not been fulfilled due to her and her current husband's actions. Thus, Mr. Sonnier's "right to control" Trey's interment and his

consent to Trey being buried in his current resting place was undermined and vitiated by the Pierres' purchase of the two plots adjacent to Trey's plot. Unless he is allowed to move Trey's remains, Mr. Sonnier cannot complete his plan for Trey's burial, and the authority to control the disposition of Trey's remains granted to him by Trey's Form 93, will have been ignored and usurped. Accordingly, in my view, the trial court abused its discretion when it denied Mr. Sonnier's request to move Trey to another cemetery, and its judgment should be reversed. I would grant judgment authorizing Mr. Sonnier to move Trey's remains to another location of his choice.

Lastly, I have considered the Board's argument that Title 8's definition of "disposition" does not include disinterment; therefore, Trey's PADD cannot be extended to authorize disinterment. "Disposition" was not defined in the statute until after this suit was filed. The retroactivity of statutes is addressed by La. R.S. 1:2, which states: "[n]o Section of the Revised Statutes is retroactive unless it is expressly so stated." Nonetheless, a law that disturbs vested rights can only be applied prospectively. *Home Bank v. Marcello*, 17-281 (La. App. 4 Cir. 10/18/17) (citing *Landry v. Baton Rouge Police Dep't*, 08-

2289 (La. App. 1 Cir. 5/8/09), 17 So.3d 991). Mr. Sonnier's rights under Trey's PADD vested at the time of Trey's death. Application of the amendment would disturb Mr. Sonnier's vested rights; therefore, the definition of disposition cannot be applied herein. Additionally, Section 659 did not address what "other directions" were required to have a decedent's remains moved. This argument lacks merit.

**202 So.3d 992 (Mem)**

**Eugene J. Sonnier, II**

**v.**

**The Catholic Foundation of the Diocese of  
Lafayette, et al.**

**NO. 16-C-0839 Supreme Court of Louisiana.  
October 28, 2016**

**PER CURIAM**

Granted in part and denied in part. We find no error in the judgment of the court of appeal insofar as it affirmed the district court's judgment holding relator failed to state a cause of action for recognition of ownership, injunctive relief or damages. However, it is unclear whether the district court made a determination of whether relator stated an alternative cause of action for re-interment pursuant to La. R.S. 8:659.

Eugene Sonnier, III ("Trey"), the son of relator, Eugene J. Sonnier, II ("Mr. Sonnier"), and his ex-wife, Norlet Pierre, died in October 2013 while serving in the United States Air Force. Prior to his death, Trey executed Department of Defense Form 93 which, among other things, allows military members to designate the "person

authorized to direct disposition" ("PADD"). Mr. Sonnier was listed as the PADD on Form 93, and thus was the person authorized to make all plans relative to Trey's funeral and burial. [202 So.3d 993]

Following Trey's death, Mr. Sonnier met with the cemetery manager and purchased a plot as Trey's burial place. Mr. Sonnier further advised the manager that his plan was to construct a double tomb so he could be buried next to his son, and indicated his intent to purchase the two adjacent plots that were necessary to construct the double tomb. However, when Mr. Sonnier contacted the manager the following month, he was advised that the adjacent plots had been purchased by Trey's mother, Ms. Pierre, and her husband. In addition, although Mr. Sonnier was the sole purchaser of Trey's plot, the title to the plot was re-issued jointly to Mr. Sonnier and Ms. Pierre.

Mr. Sonnier filed suit against several parties, essentially asserting sole ownership of the plots or, alternatively, seeking permission to move Trey's remains since he had the exclusive right to control his son's interment by virtue of his authority under Form 93. The defendants filed exceptions of no cause of action which were granted by the district court and Mr. Sonnier's

suit was thereafter dismissed. The court of appeal affirmed that judgment.

La. R.S. 8:659 provides:

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other directions in writing have been given by the decedent:

(1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.

(2) The surviving adult children of the decedent, not including grandchildren or other more remote descendants.

(3) The surviving parents of the decedent. (4) The surviving adult brothers and sisters of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

Based on our review of the writ application, it appears Mr. Sonnier failed to allege he requested consent from the cemetery authority for the re-interment or that such consent was requested but wrongfully withheld by defendants, pursuant to La. R.S. 8:659. However, because Mr. Sonnier could amend his petition to cure this defect, it is appropriate to remand the case to the district court to give relator an opportunity to do so pursuant to La. Code Civ. P. art. 934.

Trey honorably served this country as a member of the United States Air Force. Our service men and women work every day to protect and defend this nation, and put their lives at risk for the benefit of all of us. As such, these brave men and women necessarily rely on the validity of their formal designations, and should be able to trust that their wishes will be honored in the event their lives are lost in the line of duty. Here, it is undisputed that Trey specifically designated Mr. Sonnier as the **sole** PADD. Trey did not choose his mother as co-designee. Thus, Trey trusted Mr. Sonnier to independently make all decisions relative to his burial. Mr. Sonnier chose and purchased a burial plot for Trey and planned to be buried next to his son in a double tomb. Allowing Mr. Sonnier an opportunity to proceed

with his action for re-interment gives Trey's PADD directive the broad deference it deserves.

Accordingly, the writ is granted in part. The judgment of the court of appeal is amended for the sole purpose of providing that the case shall be remanded to the district court to give relator an opportunity to amend his petition to state a cause of [202 So.3d 994] action for re-interment pursuant to La. R.S. 8:659. In all other respects, the writ is denied.

JOHNSON, C.J., additionally concurs and assigns reasons.

KNOLL, J., dissents and would deny.

Weimer, J., dissents and assigns reasons.

JOHNSON, C.J., additionally concurs and assigns reasons.

I agree with the ruling of this court that Mr. Sonnier should be given the opportunity to pursue his claim for re-interment pursuant to La. R.S. 8:659.

In my view, requiring the consent of the cemetery pursuant to La. R.S. 8:659 violates Mr. Sonnier's PADD rights. 10 U.S.C. § 1482, which

governs the PADD, provides the PADD is designated “to direct disposition of the remains of a decedent.” Comparable Louisiana law provides that the PADD has the right to control interment. Mr. Sonnier's decision pursuant to his PADD power to control Trey's interment included the plan that they be buried next to each other in a double tomb. Thus, based on the specific facts of this case, Mr. Sonnier's PADD's authority in this case cannot be limited to the choice of initial disposition of the remains. Thus, any refusal to allow re- interment would impede Mr. Sonnier's PADD authority.

**KNOLL, J.**, dissents and would deny. Weimer, J., dissenting.

From the majority's ruling regarding an alternative cause of action for re- interment pursuant to La. R.S. 8:659, I respectfully dissent.

According to defendants, Mr. Sonnier filed a separate suit, unrelated to the application before this court, “styled *Petition for Permission to Remove Remains* which is currently pending in the 15th JDC, Parish of Lafayette, Docket No. 2015-5619K.” Therefore, the majority's direction for what should happen in a re-interment action, when such an action is separately pending and is not before this court, appears tantamount to

issuing an advisory opinion. “It is well settled that courts will not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies. In order to avoid deciding abstract, hypothetical or moot questions, courts require cases submitted for adjudication to be justiciable, ripe for decision, and not brought prematurely.” *LaPointe v. Vermilion Parish School Bd.*, 15-0432, p. 9 (La. 6/30/15), 173 So.3d 1152, 1159.

I am, of course, very much in favor of honoring the wishes of those who have honorably served our country. I believe this court can honor those wishes here while remaining within the constraints of the lawsuit before us. It is well within this court's power to inquire as to the status of the separate re- interment suit. I would be in favor of such an inquiry before granting leave to amend to state a re-interment cause of action that may already have been separately pleaded. Moreover, there are questions regarding the extent to which a servicemember's selection of a person to authorize the manner of the servicemember's burial amounts to an authorization for the same person to later effectuate a re-interment. Without having those questions squarely presented for this court's resolution, including a full exploration of those

questions in the courts below after each party has been heard, I believe this court has not adequately explored the extent to which Eugene J. Sonnier, III had authorized anyone to bring an action for his re-interment. The burial of servicemembers who have sacrificed so much for our country is itself a sacred matter, and the courts, including this court, ought not [202 So.3d 995] lightly presume anyone has been given the authority to disturb their final rest.

**Eugene J. SONNIER, II**  
v.  
**The CATHOLIC FOUNDATION OF THE  
DIOCESE OF LAFAYETTE, et al.**

**No. 15-1051.**  
**Court of Appeal of Louisiana, Third Circuit.**

**March 2, 2016. Rehearing Denied April 13,  
2016.**

[215 So.3d 806]

Harold D. Register, Jr., Lafayette, LA, for Plaintiff/Appellant, Eugene J. Sonnier, II.

D. Reardon Stanford, Hoyt & Stanford, Lafayette, LA, for Defendant/Appellee, Norlet Pierre.

Troy Allen Broussard, Allen & Gooch, Lafayette, LA, for Defendants/Appellees, Society of the Roman Catholic Church of the Diocese of Lafayette, The Catholic Foundation of the Diocese of Lafayette, The Congregation of St. Genevieve Roman Catholic Church.

Court composed of MARC T. AMY, PHYLLIS M. KEATY, and JOHN E. CONERY, Judges.

AMY, Judge.

The plaintiff filed suit alleging that the defendants interfered with his right to direct the disposition of his son's remains as designated by his son and as reflected by a military form. He alleged that, by virtue of the designation, the cemetery plot in which his son was buried, as well as the two adjacent plots should be titled solely in his name. Following amendment of the petition, the trial court sustained the defendants' exceptions of no cause of action and dismissed the plaintiff's claim. The plaintiff appeals. For the following reasons, we affirm.

### **Factual and Procedural Background**

The record indicates that Eugene Sonnier, III, the son of Eugene J. Sonnier, II and Norlet Pierre, died in October 2013 while serving in the United States Air Force. He was ultimately buried in Plot 21 of the Calvary Cemetery in Lafayette.

Mr. Sonnier filed this matter and by amending petition alleged that, by designation of his son, he was "the Person Authorized to Direct (PADD) the Disposition" of his son following his death. Mr. Sonnier asserted that this designation provided him with the exclusive right to "control

the interment" of his son's remains "through the D[epartment of] D[efense] Form 93." (hereinafter Form 93.)

Mr. Sonnier initially named The Catholic Foundation of the Diocese of Lafayette, Louisiana (the "Diocese") and Mrs. Pierre as defendants, alleging that he was the sole owner of the subject burial plot and [215 So.3d 807] that he "acquired ownership of the property" "by way of an insurance assignment, payments made individually, and/or pursuant to rights bestowed upon him by his son via a properly executed" Form 93. Yet, he contended that Mrs. Pierre was "in possession of the property" and was "erroneously claiming an ownership interest in" the plot. Mr. Sonnier asserted that the discord surrounding the plot resulted in the decedent's tomb not being completed. Mr. Sonnier alleged that the "Diocese of Lafayette, through Calvary Cemetery" "will complete the construction of said tomb" to his "irreparable detriment" if not restrained. Therefore, Mr. Sonnier sought the issuance of a temporary restraining order preventing the completion of the construction of the decedent's tomb. He further prayed that he be recognized as the "legal owner" of the subject plot and that the trial court order "that Defendant's alleged acquisition of ownership of

said property be erased from any public record in this parish applicable to cemetery plots."

In response, the Diocese filed an exception of no cause of action, noting that the plaintiff did not allege that it owned or managed the cemetery. The Diocese further suggested that Mr. Sonnier's suit was "procedurally flawed" as it did not name the cemetery's owner, St. Genevieve Roman Catholic Church of the Diocese of Lafayette, as a defendant. Addressing an aspect of the factual background that was not included in the original petition, the Diocese noted that Plot 21 was initially titled only in Mr. Sonnier's name. However, upon learning of Mr. Sonnier's and Mrs. Pierre's dispute as to the title, the Vice President of St. Genevieve, Monsignor Curtis Mallet, reviewed the dispute and "determined that the initial titling of the plot in Sonnier's name only was in error, and he directed the cemetery staff to issue a corrected title in Sonnier and Pierre's names, jointly." The title was thereafter reissued. Further, the Diocese asserted that no cause of action

existed as the cemetery was following its own rules and regulations in requiring completion of the tomb after Mr. Sonnier and Mrs. Pierre did not do so in excess of one year after their son's interment. This factor, the Diocese asserted,

undermined the request for a restraining order as well.

By "Amended Petition for Recognition of Ownership and Injunctive Relief," Mr. Sonnier named St. Genevieve Roman Catholic Church of the Diocese of Lafayette as a defendant. He alleged that "St. Genevieve purportedly owns Calvary Cemetery and as the owner of the cemetery St. Genevieve intends to complete construction of said tomb unless the dispute as stated in the original Petition is resolved between Plaintiff and Mrs. Pierre." Mr. Sonnier asserted that "construction could begin any day now," and that such construction of the tomb would cause him irreparable injury "as the tomb carries his son, and he has a strong interest and right in completing said tomb in a reasonable manner to his choosing." Further, he alleged that Form 93 provided him with the exclusive right to control the interment of his son and that La.R.S. 8:655, addressed below, as well as "military and federal law[,] override[ ] the policies as elicited by St. Genevieve which allegedly give it the right to complete construction of said tomb." He asserted that he "is the sole and exclusive owner" of Plot 21 "granted to him thought [sic] the DD Form 93." [215 So.3d 808]

Mr. Sonnier additionally alleged that adjacent Plots 20 and 22 "were improperly given to Mrs. Pierre because they were procured in a deceptive fashion." On this latter point, Mr. Sonnier stated that: "Mrs. Pierre was aware that Mr. Sonnier informed Mr. Dunand that Mr. Sonnier would purchase the aforementioned plots, however, totally disregarding Plaintiff's right to exclusively control the interment of Mr. Sonnier, III, Mrs. Pierre purchased the aforementioned burial plots and was granted ownership" of them. Mr. Sonnier asked that the trial court rule that he "is the correct and sole owner" of the two plots or, alternatively, that he "is the sole owner" of either plot. Barring these alternatives, Mr. Sonnier asked that the trial court permit him to remove his son's remains to another cemetery as he "has the exclusive right to control" his son's interment.

Following the amendment to the petition, the Diocese submitted evidence pertaining to the plot ownership as an exhibit to its memorandum in support of its exception of no cause of action and in opposition to the petition for recognition of ownership and injunctive relief. Additionally, Mrs. Pierre filed exceptions of no cause of action and vagueness or ambiguity of the petition.

Upon consideration of these initial filings, the trial court sustained the Diocese's exception of no cause of action and further sustained Mrs. Pierre's exception of vagueness and ambiguity of the petition. The trial court's ruling permitted Mr. Sonnier fifteen days to amend the petition.

Thereafter, Mr. Sonnier filed a Second Amended Petition for Recognition of Ownership and Injunctive Relief once again asserting that he held exclusive rights as the PADD (under Form 93). He further included allegations regarding his and Mrs. Pierre's actions in preparing for the burial of their son. He asserted that "[o]ut of the kindness of his heart," he invited Mrs. Pierre to join him at Calvary Cemetery, "not for her to make any decisions whatsoever, but for her to be there while [he] utilized his exclusive rights as the PADD to arrange" their son's funeral service. He stated that he made all selections involving plot location and vault and informed the respective personnel to forward the bills to him. He also alleged that he paid for various other funeral service expenses. He stated that, although Mrs. Pierre was aware that he intended to "and was going to pay for the plots adjacent to" their son, Mrs. Pierre "maliciously proceeded to divest [him] of his exclusive rights to direct the disposition of [their son] when she

directed" her husband to go to the cemetery and purchase Plots 20 and 22 before he could purchase them.

Mr. Sonnier further complained that Monsignor Mallet failed to correct "the error" of cemetery officials in selling the adjacent plots to Mrs. Pierre's husband and thereby "completely usurp[ed] the vested rights given to [him] as the PADD." The conflict surrounding the title [215 So.3d 809] issues as to the three plots, Mr. Sonnier asserted, resulted in the inability to complete the gravesite "because the concept that [he] rightfully chose as the PADD, requires the two adjacent burial plots that were improperly sold and taken away from [him]" and, therefore, "completely divesting" him "of his clear and absolute right to direct the disposition" of his son's remains. Mr. Sonnier asserted that he paid for all expenses associated with his son's funeral, "including the burial plot where [he] is buried" and further reimbursed Mrs. Pierre for any of her expenses. While he suggested that he bore "[a]ll financial responsibility" associated with the disposition of his son's remains, he further alleged that " 10 U.S.C. § 1482 entitled 'Expenses Incident to Death' not only gives [him] authorization as the PADD, but also gives [him]

monetary support to carry out his duties as the PADD."

At the conclusion of the second amended petition, Mr. Sonnier requested that the trial court name him as the sole owner of Plot 21 and "[i]n the alternative" he requested that the trial court name him the sole owner of

Plots 20 and 22. Finally, Mr. Sonnier prayed that if the trial court did not grant the above demands, he asked that the trial court "relocate" his son's body to another location within the cemetery.

Following the amendment, the Diocese and St. Genevieve again filed an exception of no cause of action as did Mrs. Pierre. As before, the Diocese noted that Mr. Sonnier raised no facts indicating that it owned the subject cemetery or otherwise controlled or managed the cemetery. As for St. Genevieve's involvement, it argued that the facts alleged revealed no avenue prohibiting the enforcement of its own rules and regulations regarding construction of the tomb per La.R.S. 8:204. Mrs. Pierre similarly asserted that no cause of action existed and disputed Mr. Sonnier's suggestion that the relief sought was available to him through the authority purportedly granted to him by Form 93.

Following a hearing, the trial court sustained the exceptions of no cause of action. The judgment that followed dismissed the plaintiff's claims against all defendants.

Mr. Sonnier appeals, setting forth the following assignment of error:

The trial court erred when it determined that there was no cause of action when the Office of Vicar General for the Diocese of Lafayette retitled Calvary Cemetery, St. Catherine section, plot 21 from its original owner, Eugene J. Sonnier, II and when Mr. Paul Dunand, of Calvary Cemetery, sold a burial plot to Titus and Norlet Pierre although both Mr. Dunand and Norlet Pierre were aware that Eugene Sonnier, II had reserved the plots.

As reflected by this assignment of error, Mr. Sonnier no longer addresses the prior request for injunctive relief or any facts surrounding the completion of the tomb. As that argument has seemingly been abandoned or otherwise rendered moot, we do not address that initial concern herein.

## **Discussion**

### *Exception of No Cause of Action*

Louisiana Code of Civil Procedure Article 927(A)(5) provides for the peremptory exception of no cause of action. The exception's function is to test the legal sufficiency of the plaintiff's petition by determining whether the law affords a remedy on the facts alleged. *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So.2d 1234, 1235 (La.1993). Pursuant to La.Code Civ.P. art. 931, no evidence may be introduced to support or to controvert the exception of no cause of action. In trying the exception on the face of the pleadings, the trial court must accept the [215 So.3d 810] well-pleaded allegations of fact in the petition as true and determine whether the plaintiff is legally entitled to the relief sought. *Everything on Wheels*, 616 So.2d 1234. However, because Louisiana employs a system of fact pleading, mere conclusions by the plaintiff, unsupported by facts, will not set forth a cause of action. *Ramey v. DeCaire*, 03-1299 (La.3/19/04), 869 So.2d 114. As the exception raises a question of law and the trial court bases its decision solely on the sufficiency of the petition, an appellate court reviews a ruling on an exception of no cause of action *de novo*. *Reynolds v. Bordelon*, 14-2362 (La.6/30/15), 172 So.3d 589.

*Person Authorized to Direct Disposition*

Central to Mr. Sonnier's claim against the Diocese and Mrs. Pierre is his assertion that his designation as the PADD in Form 93 authorizes him to exercise complete control of *all* matters which he argues are related to the disposition of his son's remains. In this regard, 10 U.S.C. § 1482, which relates to the expenses incident to death of military personnel, provides, in part, that:

- (c) The following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:
  - (1) The person identified by the decedent on the record of emergency data maintained by the Secretary concerned (DD Form 93 or any successor to that form), as the Person Authorized to Direct Disposition (PADD), regardless of the relationship of the designee to the decedent.
  - (2) The surviving spouse to the of the decedent.
  - (3) Blood relatives of the decedent.
  - (4) Adoptive relatives of the decedent.
  - (5) If no person covered by paragraphs (1) through (4) can be found, a person standing in loco parentis to the decedent.

Through this conduit, Mr. Sonnier seeks to have the titles of Plots 21 and/or 20 and 22 placed in his name alone. This decision, he contends, is required in order for him to fulfill the directive described by Form 93. After review, we find no error in the trial court's determination that the petitions filed in this case do not contain sufficient facts so as to reveal that he is entitled to such relief.

First, and as to the Diocese, the petition does not indicate through what channel, if any, the Diocese has control over Calvary Cemetery. Instead, in his amended petition, Mr. Sonnier alleged that St. Genevieve "purportedly owns the cemetery." He further alleges that his interactions with personnel regarding the selection of and payment for the plots, including payment by Mrs. Pierre's husband, occurred through "Paul Dunand of Calvary Cemetery." While he alleges that Monsignor Mallet "changed the deed" of Plot 21 to list himself and Mrs. Pierre as co-owners of Plot 21 "although it is their clear and written policy to not have co-owned plots," he does not identify in what capacity Monsignor Mallet made such a decision or, in this instance, which "policy" prohibits such ownership. In short, the petitions do not reveal any type of hierarchical structure that joins the

Diocese with St. Genevieve, who allegedly owned the subject cemetery.

As for St. Genevieve, the petitions lack indication that the ownership of the plot(s) is dictated by 10 U.S.C. § 1482 [215 So.3d 811] which only references the "disposition of the remains of the deceased[.]" *See also* La.R.S. 8:655. Neither the statute nor jurisprudence indicate that the parameters of the PADD directive dictate the ownership of the plot in which the deceased is interred. Moreover, the second amending petition reveals that Mr. Sonnier did not pay for adjacent Plots 20 and 22. Rather, he alleged that Mr. Pierre paid for those plots. Despite this allegation, Mr. Sonnier alternatively seeks placement of the title of those plots in his name. Whether by reference to 10 U.S.C. § 1482, or by reference to specific facts, the petitions do not set forth a cause of action entitling Mr. Sonnier to the relief sought.

Neither do we find merit in the assertion that Mr. Sonnier is entitled to have St. Genevieve re-title the plots solely in his name due to a violation of its rules and regulations.

Significantly, La.R.S. 8:204 provides that:

A cemetery authority may make, adopt, amend, add to, revise, repeal or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery, including without limitation the following:

- (1) It may restrict and limit the use of all property within its cemetery;
- (2) It may regulate the uniformity, class and kind of all markers, monuments and other structures within the cemetery and its subdivisions; [215 So.3d 812]
- (3) It may regulate or prohibit the erection and/or installation of monuments, markers, effigies, structures and foundations within the cemetery;
- (4) It may regulate or prevent the introduction or care of plants or shrubs within the cemetery;
- (5) It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment spaces for purposes violative of its restrictions or rules and regulations;

(6) It may regulate the conduct of persons and prevent improper assemblages in the cemetery, and

(7) It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any interment space or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.

Although the plaintiff suggests that various cemetery rules were violated, the allegation is conclusory in nature. The petitions do not set forth sufficient facts so as to determine that particular conduct by St. Genevieve violated a particular rule(s) applicable to the cemetery. The petitions generally detail the factual background, above, and describe St. Genevieve's ultimate actions as violative of their rules and regulations. However, mere conclusions of the plaintiff unsupported by facts will not set forth a cause or right of action. *Montalvo v. Sondes*, 93-2813 (La.5/23/94), 637 So.2d 127.

By way of example, we note that, in Paragraph 58 of the second amended petition, Mr. Sonnier

alleges that "[t]he Diocese of Lafayette has indicated in their policies that joint ownership of burial plots is not allowed." Yet, as stated above, there is no allegation that the Diocese owned, controlled, or directed Calvary Cemetery. Neither do the petitions advance that the "policy" referenced in this regard is applicable to this occurrence. Simply, the petitions allege various facts and allegations without sufficient connectivity so as to set forth a cause of action.

Accordingly, we leave undisturbed the sustaining of the exception of no cause of action as to both the Diocese and to St. Genevieve.

*Mrs. Norlet Pierre*

Finally, we address the petition(s) in the context of the claim against Mrs. Pierre. While the plaintiff broadly states that Mrs. Pierre interfered with his ultimate "concept" to have three adjacent plots for his son's burial, the petitions do not set forth facts constituting a cause of action against her in this regard. Instead, she is alleged to have caused the title of Plot 21 to be re-issued jointly in her name and that she purchased the two adjacent plots. While Mr. Sonnier was dissatisfied with her conduct, he has not alleged facts constituting a cause of

action against her, i.e., no facts constituting a tortious or contractual claim.

Accordingly, we leave undisturbed the trial court's determination.

#### *Disinterment*

Finally, we point out that, by the second amending petition, Mr. Sonnier alternatively sought permission to have his son's body moved to another location within Calvary Cemetery "based on all information presented herein which illustrate that Eugene Sonnier, II's rights have been [215 So.3d 813] vastly undermined." To the extent the trial court's ruling encompassed this alternative demand, we again leave that claim undisturbed. Instead, 10 U.S.C. § 1482(c) permits the PADD to "direct disposition of the remains of a decedent[.]" The statute is silent on the right to later disinter those remains.

However, La.R.S. 8:659, entitled "Permission to move remains," provides that:

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of

one of the following, in the order named, unless other directions in writing have been given by the decedent:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) The surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent. (4) The surviving adult brothers and sisters of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

This provision makes no reference to Form 93. Additionally, in *Spiess v. Greenwood Development Co., Inc.*, 542 So.2d 810, 813 (La.App. 3 Cir.1989), a panel of this court made the distinction between a party having the legal authority "to control the disposition of the remains of a deceased person" pursuant to La.R.S. 8:655 and the person(s) having authority to direct the relocation of a deceased's remains per La.R.S. 8:659. Referencing those statutes,

the panel explained that the plaintiff in that case "clearly had the sole statutory authority to initially determine the decedent's final resting place. However, after the decedent's initial burial, the voluntary consent of the defendant cemetery authority was also statutorily required before the decedent's remains could be disinterred and transferred." *Id.* Notably, while La.R.S. 8:655 includes a reference to the PADD on Form 93, La.R.S. 8:659 includes no such reference.

As above, we find that the petitions do not set forth facts allowing this alternative relief.

**DECREE**

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this proceeding are assessed to the plaintiff—appellant, Eugene J. Sonnier, II.

**AFFIRMED.**

10 U.S. Code § 1482.  
Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

- (1) Recovery and identification of the remains.
- (2) Notification to the next of kin or other appropriate person.
- (3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.
- (4) Furnishing of a uniform or other clothing.
- (5) Furnishing of a casket or urn, or both, with outside box.
- (6) Hearse service.
- (7) Funeral director's services.
- (8) Transportation of the remains, and travel and transportation allowances as specified in regulations prescribed under section 464 of title 37 for an escort of one person, to the place

selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized. When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.

(9) Interment or inurnment of the remains.

(10) In the case of a decedent under the jurisdiction of a Secretary of a military department at the time of death, enduring care of remains interred in a foreign cemetery if the burial location was designated by such Secretary.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing

the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) The following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The person identified by the decedent on the record of emergency data maintained by the Secretary concerned (DD Form 93 or any successor to that form), as the Person Authorized to Direct Disposition (PADD), regardless of the relationship of the designee to the decedent.

(2) The surviving spouse of the decedent.

(3) Blood relatives of the decedent.

(4) Adoptive relatives of the decedent.

(5) If no person covered by paragraphs (1) through (4) can be found, a person standing in loco parentis to the decedent.

(d) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be

nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

- (1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and
- (2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the member has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(e) Presentation of Flag of the United States.—

(1) In the case of a decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses for the presentation of a flag of the United States to the following persons:

- (A) The person designated under subsection (c) to direct disposition of the remains of the decedent.
- (B) The parents or parent of the decedent, if the person to be presented a flag under subparagraph (A) is other than a parent of the decedent.
- (C) The surviving spouse of the decedent (including a surviving spouse who remarries after the decedent's death), if the person to be presented a flag under subparagraph (A) is other than the surviving spouse.
- (D) Each child of the decedent, regardless of whether the person to be presented a flag under subparagraph (A) is a child of the decedent.

(2) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies

under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

- (A) was a member of the Ready Reserve; or
- (B) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under section 12731 of this title.

(3) A flag to be presented to a person under subparagraph (B), (C), or (D) of paragraph (1) shall be of equal size to the flag presented under subparagraph (A) of such paragraph to the person designated to direct disposition of the remains of the decedent.

(4) This subsection does not apply to a military prisoner who dies while in the custody of the Secretary concerned and while under a sentence that includes a discharge.

(5) In this subsection:

(A) The term "parent" includes a natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year before the death of the decedent stood in loco parentis

to the decedent. Preference under paragraph (1)(B) shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(B) The term "child" has the meaning prescribed by section 1477(d) of this title.

(f) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned may pay any other expenses relating to the remains of such a decedent that are authorized to be paid under this section only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(g)

- (1) The payment of expenses incident to the recovery, care, and disposition of the remains of a decedent covered by section 1481(a)(10) of this title is limited to those expenses that, as determined under regulations prescribed by the Secretary of Defense, would not have been incurred but for the retention of those remains for purposes of a forensic pathology investigation by the Armed Forces Medical Examiner under section 1471 of this title.
- (2) In a case covered by paragraph (1), if the person designated under subsection (c) to direct disposition of the remains of a decedent does not direct disposition of the remains that were retained for the forensic pathology investigation, the Secretary may pay for the transportation of those remains to, and interment or inurnment of those remains in, an appropriate place selected by the Secretary, in lieu of the transportation authorized to be paid under paragraph (8) of subsection (a).
- (3) In a case covered by paragraph (1), expenses that may be paid do not include expenses with respect to an escort under paragraph (8) of subsection (a), whether or not on a reimbursable basis.

(4) The Secretary concerned may pay any other expenses relating to the remains of such a decedent that are authorized to be paid under this section on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available at the time of reimbursement for the payment of such expenses.

Louisiana Revised Statutes

Title 8 §655. Right of disposing of remains; military personnel; limitation of liability

A. Unless other specific directions have been given or the designation of a specific person to control disposition has been made by the decedent in the form of a notarial testament or a written and notarized declaration, the following persons, in the priority listed, have the right to control and authorize the interment of a deceased person, as defined in R.S. 8:1:

- (1) The person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.
- (2) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.
- (3) A majority of the surviving adult children of the decedent.
- (4) A majority of the surviving adult grandchildren of the decedent.
- (5) The surviving parents of the decedent.
- (6) A majority of the surviving adult siblings of the decedent.
- (7) A majority of the surviving adult persons respectively in the next degrees of

kindred as established in Civil Code Article 880 et seq.

B.(1) Notwithstanding the provisions of Subsection A of this Section, if the decedent died in a manner described by 10 U.S.C. §1481 (a)(1) through (8) while serving in any branch of the United States Armed Forces, the United States Reserve Forces, or National Guard, and the decedent executed a United States Department of Defense Record of Emergency Data, known as DD Form 93, or its successor form, the right to control interment for the decedent shall devolve upon the Person Authorized to Direct Disposition, also referred to as the PADD, as indicated on the DD Form 93 or its successor form.

(2) There shall be no liability for a cemetery authority, funeral establishment, funeral director, crematory authority, or the employees or agents of any of them to whom a copy of a DD Form 93 is presented, purportedly executed by the decedent for conduction of the interment or other disposition of the decedent's remains, pursuant to the instructions of the PADD as indicated on the DD Form 93, or for relying on the representation of the PADD that the decedent died in a manner described in Paragraph (1) of this Subsection.

C.(1) In the event that the decedent has made multiple notarial testaments or notarized declarations pursuant to Subsection A of this Section, the testament or declaration, whichever is dated last, shall control.

(2) In the event that the decedent has made one or more notarial testaments or notarized declarations pursuant to Subsection A of this Section, and the decedent executed a DD Form 93 and died in a manner described in Subsection B of this Section, the testament, declaration, or the DD Form 93, whichever is dated last, shall control interment of the decedent's remains.

D. Notwithstanding the provisions of Subsection A of this Section, in the event that the coroner releases the remains of the decedent to an interested person pursuant to R.S. 9:1551(A)(1), such person has the right to control the disposition of the remains of the decedent.

E. In the absence of specific directions given by the decedent, if the authorization of the person or persons with the right to control disposition cannot be obtained, a final judgment of a district court shall be required.

## Department of Defense Form 93:

RECORD OF EMERGENCY DATA			
PRIVACY ACT STATEMENT			
<b>AUTHORITY:</b> 5 U.S.C. 552, 10 U.S.C. 865, 1475 to 1490 and 2771, 38 U.S.C. 1970, 44 U.S.C. 3101, and 40 U.S.C. 9307 (SSN). <b>PRINCIPAL PURPOSES:</b> This form is used by military personnel and their dependents and Defense civilian and contractor personnel, collectively referred to as civilians, when applicable. For <b>military personnel</b> , it is used to designate beneficiaries for certain benefits in the event of the Service member's death. It is also a guide for disposition of that member's pay and allowances if captured, missing or interned. It also shows names and addresses of the person(s) the Service member desires to be notified in case of emergency or death. For <b>civilian personnel</b> , it is used to expedite the notification process in the event of an emergency and/or the death of the member. The purpose of soliciting the SSN is to provide positive identification. All items may not be applicable. <b>PROTECTED INFORMATION:</b> None <b>DISCLOSURE:</b> Voluntary; however, failure to provide accurate personal identifier information and other solicited information will delay notification and the processing of benefits to designated beneficiaries if applicable.			
INSTRUCTIONS TO SERVICE MEMBER		INSTRUCTIONS TO CIVILIANS	
<p>This extremely important form is to be used by you to show the names and addresses of your spouse, children, parents, and any other person(s) you would like notified if you become a casualty (other family members or fiance), and, to designate beneficiaries for certain benefits if you die. <b>IT IS YOUR RESPONSIBILITY</b> to keep your Record of Emergency Data up to date to show you are still married or if you have received a divorce, or if there are any show changes in your family or other personnel listed, for example, as a result of marriage, civil court action, death, or address change.</p> <p>This extremely important form is to be used by you to show the names and addresses of your spouse, children, parents, and any other person(s) you would like notified if you become a casualty. Not every item on this form is applicable to you. <b>This form is used by the Department of Defense (DoD) to expedite notification in case of emergencies or death.</b> It does not have a legal impact on other forms you may have completed with the DoD or your employer.</p>			
IMPORTANT: This form is divided into two sections: Section 1 - Emergency Contact Information and Section 2 - Benefits Related Information. READ THE INSTRUCTIONS ON PAGES 3 AND 4 BEFORE COMPLETING THIS FORM.			
SECTION 1 - EMERGENCY CONTACT INFORMATION			
<b>1. NAME</b> (Last, First, Middle Initial)		<b>2. SSN</b>	
<b>3a. SERVICE-CIVILIAN CATEGORY</b> <input type="checkbox"/> ARMY <input type="checkbox"/> NAVY <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> AIR FORCE <input type="checkbox"/> DoD <input type="checkbox"/> CIVILIAN <input type="checkbox"/> CONTRACTOR		<b>b. REPORTING UNIT CODE/DUTY STATION</b>	
<b>4a. SPOUSE NAME</b> (If applicable) (Last, First, Middle Initial) <input type="checkbox"/> SINGLE <input type="checkbox"/> DIVORCED <input type="checkbox"/> WIDOWED		<b>b. ADDRESS</b> (Include ZIP Code) AND <b>TELEPHONE NUMBER</b>	
<b>5. CHILDREN</b> <b>a. NAME</b> (Last, First, Middle Initial)		<b>b. RELATIONSHIP</b> <b>c. DATE OF BIRTH</b> (YYYYMMDD) <b>d. ADDRESS</b> (Include ZIP Code) AND <b>TELEPHONE NUMBER</b>	
<b>6a. FATHER NAME</b> (Last, First, Middle Initial)		<b>b. ADDRESS</b> (Include ZIP Code) AND <b>TELEPHONE NUMBER</b>	
<b>7a. MOTHER NAME</b> (Last, First, Middle Initial)		<b>b. ADDRESS</b> (Include ZIP Code) AND <b>TELEPHONE NUMBER</b>	
<b>8a. DO NOT NOTIFY DUE TO ILL HEALTH</b>		<b>b. NOTIFY INSTEAD</b>	
<b>9a. DESIGNATED PERSON(S)</b> (Military only)		<b>b. ADDRESS</b> (Include ZIP Code) AND <b>TELEPHONE NUMBER</b>	
<b>10. CONTRACTING AGENCY AND TELEPHONE NUMBER</b> (Contractors only)			

DD FORM 93, JAN 2008

PREVIOUS EDITION IS OBSOLETE.

Adobe Professional X

SECTION 2 - BENEFITS RELATED INFORMATION			
11a. BENEFICIARY(IES) FOR DEATH GRATUITY <small>(Military only)</small>	b. RELATIONSHIP	c. ADDRESS (include ZIP Code) AND TELEPHONE NUMBER	d. PERCENTAGE
12a. BENEFICIARY(IES) FOR UNPAID PAY/ALLOWANCES <small>(Military only)</small> NAME AND RELATIONSHIP	b. ADDRESS (include ZIP Code) AND TELEPHONE NUMBER	c. PERCENTAGE	
13a. PERSON AUTHORIZED TO DIRECT DISPOSITION (PADD) <small>(Military only)</small> NAME AND RELATIONSHIP	b. ADDRESS (include ZIP Code) AND TELEPHONE NUMBER		
14. CONTINUATION/REMARKS			
15. SIGNATURE OF SERVICE MEMBER/CIVILIAN (include rank, rate or grade if applicable)	16. SIGNATURE OF WITNESS (include rank, rate, or grade as appropriate)	17. DATE SIGNED <small>(YYYYMMDD)</small>	

DD FORM 93 (BACK), JAN 2008

### INSTRUCTIONS FOR PREPARING DD FORM 93

(See appropriate Service Directives for supplemental instructions for completion of this form at other than MEPS)

All entries explained below are for electronic or typewriter completion, except those specifically noted. If a computer or typewriter is not available, print in black or blue-black ink insuring a legible image on all copies. Include "Jr.," "Sr.," "III" or similar designation for each name, if applicable. When an address is entered, include the appropriate ZIP Code. If the member cannot provide a current address, indicate "Unknown" in the appropriate item. Addresses should be P.O. Box, Street, Room number, and indicate in Item 14, "Continuation Remarks", a street address or general guidance to reach the place of residence. In addition, the notation "See item 14" should be included in the item pertaining to the particular next of kin or when the space for a particular item is insufficient. If the address for the person in the item has been shown in a preceding item, it is unnecessary to repeat the address; however, the name must be entered. Those items that are considered not applicable to civilians will be left blank.

ITEM 1. Enter full last name, first name, and middle initial.

ITEM 2. Enter social security number (SSN).

ITEM 3a. Service. Military: Mark X in appropriate block. Civilian: Mark two blocks as appropriate. Examples: an Army civilian would mark Army and either Civilian or Contractor; a DoD civilian, without affiliation to one of the Military Services, would mark DoD and then either Civilian or Contractor as appropriate.

ITEM 3b. Reporting Unit Code/Duty Station. See Service Directives.

ITEM 4a. Spouse Name. Enter last name (if different from item 1), first name and middle initial on the line provided. If single, divorced, or widowed, mark appropriate block.

ITEM 4b. Address and Telephone Number. Enter the "actual" address and telephone number, not the mailing address. Include civilian title or military rank and service if applicable. If one of the blocks in 4a is marked, leave blank.

ITEM 5a-d. Children. Enter last name (only if different from item 1) first name and middle initial, relationship, and date of birth of all children. If none, so state. Include illegitimate children if acknowledged by member or paternity/maternity has been judicially decreed. Relationship examples: son, daughter, stepson or daughter, adopted son or daughter or ward. Date of birth example: 19950704. For children not living with the member's current spouse, include address and name and relationship of person with whom residing in item 5d.

ITEM 6a. Father Name. Last name, first name and middle initial.

ITEM 6b. Address and Telephone Number of Father. If unknown or deceased, so state. Include civilian title or military rank and service if applicable. If other than natural father is listed, indicate relationship.

ITEM 7a. Mother Name. Last name, first name and middle initial.

ITEM 7b. Address and Telephone Number of Mother. If unknown or deceased, so state. Include civilian title or military rank and service if applicable. If other than natural mother is listed, indicate relationship.

ITEM 8. Persons Not to be Notified Due to Ill Health.  
a. List relationship, e.g., "Mother" of person(s) listed in items 4, 5, 6, or 7 who are not to be notified of a casualty due to ill health. If more than one child, specify, e.g., "daughter Susan." Otherwise, enter "None".  
b. List relationship, e.g., "Father" or name and address of person(s) to be notified in lieu of person(s) listed in item 8a. If "None" is entered in item 8a, leave blank.

ITEM 9a. This item will be used to record the name of the person or persons, if any, other than the member's primary next of kin or immediate family, to whom information on the whereabouts and status of the member should be provided if the member is placed in a missing status. Reference 10 USC, Section 655. **NOT APPLICABLE to civilians.**

ITEM 9b. Address and telephone number of Designated Person(s). **NOT APPLICABLE to civilians.**

ITEM 10. Contracting Agency and Telephone Number (Contractors only). **NOT APPLICABLE to military personnel.** Civilian contractors will provide the name of their contracting agency and its telephone number. Example: XYZ Electric, (703) 555-5689. The telephone number should be to the company or corporation's personnel or human resources office.

ITEM 11a. Beneficiary(ies) for Death Gratuity (Military only). Enter first name(s), middle initial, and last name(s) of the person(s) to receive death gratuity pay. A member may designate more than one person to receive a portion of the death gratuity pay. The designation of a person to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the person may receive. If the member does not wish to designate a beneficiary for the payment of death gratuity, enter "None," or if the full amount is not designated, the payment or balance will be paid as follows:

- (1) To the surviving spouse of the person, if any;
- (2) To any surviving children of the person and the descendants of any deceased children by representation;
- (3) To the surviving parent(s) or the survivor of them;
- (4) To the duly appointed executor or administrator of the estate of the person;
- (5) If there are none of the above, to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

The member should make specific designations, as it expedites payment.

DD FORM 93 (INSTRUCTIONS), JAN 2008

INSTRUCTIONS FOR PREPARING DD FORM 93

(Continued)

ITEM 11a. (Continued) Seek legal advice if naming a minor child as a beneficiary. If a member has a spouse but designates a person other than the spouse to receive all or a portion of the death gratuity pay, the Service concerned is required to provide notice of the designation to the spouse. **NOT APPLICABLE to civilians.**

ITEM 11b. Relationship. **NOT APPLICABLE to civilians.**

ITEM 11c. Enter beneficiary(ies) full mailing address and telephone number to include the ZIP Code. **NOT APPLICABLE to civilians.**

ITEM 11d. Show the percentage to be paid to each person. Enter 10%, 20%, 30%, up to 100% as appropriate. The sum shares must equal 100 percent. If no percent is indicated and more than one person is named, the money is paid in equal shares to the persons named. **NOT APPLICABLE to civilians.**

ITEM 12a. Beneficiary(ies) for Unpaid Pay/Allowance (**Military only**). Enter first name(s), middle initial, last name(s) and relationship of person to receive unpaid pay and allowances at the time of death. The member may indicate anyone to receive this payment. If the member designated two or more beneficiaries, state the percentage to be paid each in item 10c. If the member does not wish to designate a beneficiary, enter "By Law." The member is urged to designate a beneficiary for unpaid pay and allowances as payment will be made to the person in order of precedence by law (10 USC 2771) in the absence of a designation. Seek legal advice if naming a minor child as beneficiary. **NOT APPLICABLE to civilians.**

ITEM 12b. Enter beneficiary(ies) full mailing address and telephone number to include the ZIP Code. **NOT APPLICABLE to civilians.**

ITEM 12c. If the member designated two or more beneficiaries, state the percentage to be paid each in this section. The sum shares must equal 100 percent. **NOT APPLICABLE to civilians.**

ITEM 13a. Enter the name and relationship of the Person Authorized to Direct Disposition (PADD) of your remains should you become a casualty. Only the following persons may be named as a PADD: surviving spouse, blood relative of legal age, or adoptive relatives of the decedent. If neither of these three can be found, a person standing in loco parentis may be named. **NOT APPLICABLE to civilians.**

ITEM 13b. Address and telephone number of PADD. **NOT APPLICABLE to civilians.**

ITEM 14. Continuations/Remarks. Use this item for remarks or continuation of other items, if necessary. Prefix entry with the number of the item being continued; for example, 5/John J. Son/ 19851220/321 Pecan Drive, Schertz TX 78151. Also use this item to list name, address, and relationship of other persons the member desires to be notified. Other dependents may also be listed. This block offers the greatest amount of flexibility for the member to record other important information not otherwise requested but considered extremely useful in the casualty notification and assistance process. Besides continuing information from other blocks on this form, the member may desire to include additional information such as: NOK language barriers, location or existence of a Will, additional private insurance information, other family member contact numbers, etc. If additional space is required, attach a supplemental sheet of standard bond paper with the information.

ITEM 15. Signature of Service Member/Civilian. Check and verify all entries and sign all copies in ink as follows: First name, middle initial, last name. Include rank, rate, or grade if applicable. May be electronically signed (see DoD Instruction 1300.18 for guidelines).

ITEM 16. Signature of Witness. Have a witness (disinterested person) sign all copies in ink as follows: First name, middle initial, last name. Include rank, rate, or grade as appropriate. A witness signature is not required for electronic versions of the DD Form 93 (see DoD Instruction 1300.18).

ITEM 17. Date the member or civilian signs the form. This item is an ink entry and must be completed on all copies.

DD FORM 93 (INSTRUCTIONS) (BACK), JAN 2008